IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6119 OF 1996

Dhanappa Gurlingappa Murgundi)
R/a. Umdi, Tal.: Jath)
Dist. : Sangli.).. Petitioner

Versus

1) The Deputy Engineer)
Public Works Sub-Division)
Jat, District : Sangli.)

2) The State of Maharashtra).. Respondents

Ms.Seema Sarnaik for the Petitioner.

None present for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2004

ORAL JUDGMENT :

. The Petitioner challenges the Order dated 17th September 1996 passed by the Industrial Court, Kolhapur allowing the Revision Application filed by the Respondents. While allowing the Revision Application, the Industrial Court has dismissed the Complaint filed by the Petitioner.

2. The Petitioner was employed as a Muster Assistant with the Respondents from 29th February 1984. His services came to be terminated on 15th November 1987 without following the provisions of law. Several assurances were given to the Petitioner by the

Respondents and other officers of the State Government that he would be taken back in service. It appears that the Petitioner waited for these assurances to materialise. However, when no relief was forthcoming, the Petitioner filed a Complaint under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. This Complaint was filed in 1999 i.e. four years after the alleged termination of service. The Labour Court had condoned the delay in filing the Complaint and found that the termination of service had been effected with undue haste and for patently false reasons. The Labour Court, therefore, allowed the Complaint by directing the Respondents to reinstate the Petitioner with continuity of service but without back wages.

3. Aggrieved by this order, the Respondents prefer Revision Application before the Industrial Court. The Industrial Court while exercising jurisdiction under Section 44 of the MRTU & PULP Act, came to the conclusion that the Labour Court ought not to have condoned the delay in filing the Complaint and has, therefore, dismissed it. The Industrial Court was of the view that the Petitioner ought to have been more diligent in prosecuting his cause and it was not possible to accept the reason put forth by the Petitioner that he was given several assurances by the

Officers of the State Government for his reinstatement in service. The Industrial Court has observed that there is a Resolution of the State Government dated 1st December 1985 under which Muster Assistants who were working in the establishment on 31st May 1983 were to be absorbed as regular employees as and when posts were filled.

4. Ms.Seema Sarnaik, learned Advocate for the Petitioner, submits that the Industrial Court ought not to have set aside the order of the Labour Court once it had condoned the delay. She submits that the revisional Court ought not to have reversed the conclusion of the Labour Court on the ground of delay. She submits that the Petitioner had made several attempts to obtain work and it was always a practice that despite the service being dispensed with, the Respondents would re-employ the worker as Muster Assistant. She submits that the Petitioner should not be penalised for the lethargy of the Respondents in informing him as to whether the relief sought by him was being granted.

5. Once the Labour Court had come to the conclusion that the delay ought to be condoned, the Industrial Court ought not to have re-opened the issue under Section 44 of the MRTU & PULP Act. The revisional jurisdiction of the Industrial Court ought not to have

been exercised in order to defeat the claim of the workman only on the ground that there was inordinate delay which the Labour Court had condoned.

6. In these circumstances, the Industrial Court's order is set aside. However, with the passage of time, it would be difficult to reinstate the workman at this stage in view of the several Resolution passed by the State Government. However, the Resolution of the State Government of 1st December 1995 states that all persons who are on the muster rolls on 31st May 1993 would be absorbed as and when posts are available. In my view, the Petitioner ought to be given benefit of this Resolution. However, it is made clear that although he would be considered to have been in service as on 31st May 1993, he is not entitled to any monetary benefits. However, for the purposes of employment, the Petitioner would be treated at the bottom of the seniority list of 31st May 1993.

7. For the foregoing reasons, Writ Petition disposed of accordingly. No order as to costs.

8. Office to supply authenticated copy of this Judgment.